



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Utah State Office
440 West 200 South, Suite 500
Salt Lake City, UT 84101
<http://www.blm.gov/ut/st/en.html>



IN REPLY REFER TO:
3100 (UT922000)

February 13, 2015

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DECISION

WildEarth Guardians	:	Protests of the Inclusion of Certain
319 S. 6 th Street	:	Lease Parcels on the February 17, 2015
Laramie, Wyoming 82070	:	Competitive Oil and Gas Lease Sale

Protest Dismissed

On November 14, 2014, the Bureau of Land Management (“BLM”) Utah State Office posted a Notice of Competitive Oil and Gas Lease Sale (“NCLS”) that identified parcels of land which the BLM proposed to offer for oil and gas leasing at a competitive lease auction scheduled for February 17, 2015 (“February 2015 Lease Sale”).¹ That NCLS also provided formal notice of a 30-day public protest period for the February 2015 Lease Sale by stating the following:

All protests must meet the following requirements:

- We must receive a protest no later than 4:30 p.m. on December 15, 2014. The protest must also include any statement of reasons to support the protest. We will dismiss a late-filed protest or a protest filed without a statement of reasons...*
- You may file a protest either by mail in hardcopy form or by telefax. You may not file a protest by electronic mail. A protest filed by fax must be sent to (801) 539-4237...*

NCLS at pg. 6 (emphasis added).

On December 15, 2014, at 5:47 p.m. Mountain Standard Time (“MST”), BLM Utah received a letter, via telefax, whereby WildEarth Guardians and Rocky Mountain Wild (collectively “WEG”) jointly protested the oil and gas leasing proposal that the NCLS had proposed for the

¹ On November 14, 2014, a hard copy of the NCLS was posted in the “Public Room” of the BLM Utah State Office and an electronic copy of the NCLS was posted on the BLM Utah oil and gas lease sales website located at: http://www.blm.gov/ut/st/en/prog/energy/oil_and_gas/oil_and_gas_lease.html

February 2015 Lease Sale. More specifically, the protest letter submitted by WEG expressly protested parcels UTU90963 (UT0215 – 065), UTU90964 (UT0215 – 084), and UTU90969 (UT0215 – 096), which the NCLS proposed to offer for oil and gas leasing at the February 2015 Lease Sale.

It is indisputable that WEG filed its letter in protest of the February 2015 Lease Sale after the public protest period had concluded at 4:30 p.m. MST on December 15, 2014. The untimely nature of that protest is evident from the date and time of receipt (December 15, 2014 at 5:47 p.m. MST) that the receiving (BLM) telefax machine stamped on WEG's protest letter, as well as the date and time of transmittal (December 15, 2014 at 5:02 p.m. MST) that the transmitting (WEG) telefax machine stamped on the protest letter.² In other words, pursuant to the date and time stamps of the transmitting and receiving telefax machines, WEG sent the protest letter at 5:02 p.m. MST on December 15, 2014, and the BLM received that protest letter at 5:47 p.m. MST on December 15, 2014, both of which occurred after the February 2015 Lease Sale protest period had concluded at 4:30 p.m. MST on December 15, 2014. In light of the aforementioned untimely filing and receipt for the February 2015 Lease Sale protest submitted by WEG, that protest is hereby dismissed in its entirety.

The dismissal of WEG's late-filed protest is consistent with the conspicuous instructions provided in the NCLS, which state that the BLM "will dismiss a late-filed protest." *Id.* In addition, the dismissal of the protest due to untimeliness is also consistent with guidance from the Interior Board of Land Appeals ("IBLA"). More specifically, IBLA has supported decisions by the BLM to dismiss protests on account untimeliness in situations where the protest was received after the designated filing deadline and sufficient notice of that filing deadline was provided. *See e.g. Lawrence v. Smart Trust*, 129 IBLA 351 (1994).

As stated above, it is indisputable that WEG's protest was filed and, as a result, received after the filing deadline for protests of the February 2015 Lease Sale. Moreover, considering that the practice of providing 30-days to file protests and the use of a NCLS to provide notice of such filing deadlines, exactly as has occurred with the February 2015 Lease Sale, is a long-standing practice of BLM Utah for oil and gas lease sales and that practice is consistent with BLM national policy for oil and gas lease sales (*See* BLM Washington Office Instruction Memorandum No. 2010-117; *see also* BLM Handbook § 3120-1), it is clear that WEG received sufficient notice of the February 2015 Lease Sale protest filing deadline. As such, it is appropriate to dismiss the protest filed by WEG.

Of the three parcels specifically identified in the protest filed by WEG, only one, parcel UTU90969 (UT0215 – 096), will be offered for oil and gas leasing at the February 2015 Lease Sale. The other two parcels referenced in WEG's protest letter, parcels UTU90963 (UT0215 – 065) and UTU90964 (UT0215 – 084), were deferred from being offered for lease at the February 2015 Lease Sale in an errata sheet issued by this office on February 10, 2015.

² A copy of the cover sheet for the protest letter that WEG submitted via telefax, with the aforementioned date and time stamps, has been enclosed with this decision.

This decision may be appealed to the Interior Board of Land Appeals (“IBLA”) in accordance with the regulations contained in Title 43 of the Code of Federal Regulations (“CFR”) Part 4 and as described on the enclosed BLM Form 1842-1. In order for an appeal of this decision to be considered, a written notice of appeal must be filed with this office (as described on the enclosed Form 1842-1) within 30-days from receipt of this decision.

If you wish to file a petition for a stay pursuant to 43 CFR § 4.21 as to the effectiveness of this decision during the time that your appeal is being reviewed by IBLA, a petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification in accordance with the standards listed in 43 CFR § 4.21(b), which include:

- (1) The relative harm to the parties if the stay is granted or denied;
- (2) The likelihood of the appellant’s success on the merits;
- (3) The likelihood of irreparable harm if the stay is not granted; and
- (4) Whether the public interest favors granting the stay.

Copies of the notice of appeal, petition for a stay, and a statement of reasons must also be submitted to each party named in this decision and to the Office of the Regional Solicitor, Intermountain Region, U.S. Department of the Interior at Federal Building Room 6201, 125 South State Street, Salt Lake City, Utah 84138, at the same time that the original documents are filed in this office.

Please direct any questions regarding this decision to Justin Abernathy, BLM Utah Fluid Minerals Leasing Coordinator, at 801-539-4067.

/s/ Jenna Whitlock

For Juan Palma
State Director

Enclosures:

1. Form 1842-1
2. WEG Protest Coversheet

cc: Rocky Mountain Wild
Attn: Matthew Sandler
1536 Wynkoop Street, Ste. 303
Denver, Colorado 80202